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EXTRAORDINARY

PART II—Section 3

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No. 114] NEW DELHI, SATURDAY, MAY 9, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th May, 1953

S.R.O. 879.—WHEREAS the election of Shri Kishore Singh, as a member of the Legislative Assembly of the State of Rajasthan from the Sanchore Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lumba Ram S/o Shri Gulla Ram Bishnoi, Village Lohawat, Tehsil Phalodi, District Jodhpur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal,

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER.

ELECTION PETITION No. 311 of 1952.

Shri Lumba Ram, son of Gulla Ram, Bishnoi of village Lohawat, T. Phalodi, District Jodhpur, Rajasthan.—*Petitioner.*

Versus

1. Shri Ram Narnin, son of Salag Ram, Brahman, of Sanchore, District Jalore.
2. Shri Haqiqat Ullah, son of Shahbaz Khan, of Jodhpur.
3. Shri Kanak Raj, son of Ghambani Ram Oswal, of Sanchore, District Jalore.
4. Shri Kishore Singh, son of Virad Singh, Rajput of village Motigam, Tehsil Sanchore, District Jalore—*Respondents.*

Petition under Section 81 of the Representation of the People Act, 1951, against the Election of Respondent No. 4 to the Rajasthan Legislative Assembly from Sanchore Constituency.

CORAM:

1. Shri M. P. Asthana—*Chairman.*
2. Shri M. C. Bhandari—*Member.*
3. Shri Goverdhanadas T. Gajria—*Member.*

Shri Rawat Mal Kochar, Advocate with Shri Bhanwar Lal, Pleader for the *Petitioner.*

Respondents—1-3 Absent.

Shri Thanchand Mehta, Advocate with Shri Bhopal Singh, Pleader, for respondent No. 4.

JUDGMENT

This petition has been filed under Section 81 of the Representation of the People Act, 1951, by one Shri Lumba Ram that the election held from the Sanchore Assembly Constituency, to the Rajasthan Legislative Assembly, in which the respondent No. 4 was declared to have been successful, be declared as void, on the ground that his nomination papers were improperly rejected by the Returning Officer, which has materially affected the result of the election. It appears that the petitioner had filed three nomination papers as a candidate for election to the Rajasthan Legislative Assembly during the last election, from the Sanchore Constituency before the Returning Officer, against which the respondent No. 2 Shri Haqiqat Ullah raised certain objections, out of which the Returning Officer upheld one, viz., that since the petitioner held a contract of working stone-quarries under the Rajasthan Government, he was disqualified under section 7(d) of the Representation of the People Act, 1951 and therefore rejected them. The petitioner thus, being aggrieved by this rejection order of the Returning Officer, has filed this petition.

Out of the respondents, respondents 1 and 3 have not appeared and the respondent No. 2 only filed a reply, in which he has raised no objection to the petition being allowed in spite of the fact, that the Returning Officer rejected the petitioner's nomination papers on the objections of this respondent. It is the only respondent No. 4, the successful candidate, who has contested the petition. He did not file any reply but his learned Counsel made a statement on 15th December, 1952 in which he admitted all the allegations of the petitioner regarding the rejection of his nomination papers by the Returning Officer on the ground of the petitioner holding a contract under the Government of Rajasthan but he has denied that the said order of rejection is improper or illegal, and has further alleged that since the petitioner admitted before the Returning Officer that he was holding a contract under the Government of Rajasthan, he is estopped from challenging the order of rejection passed by the Returning Officer. On these allegations the Tribunal framed the following issues:—

1. Was the nomination paper of the petitioner improperly rejected, as alleged? If so, what is its effect?
2. Is the petitioner estopped from challenging the correctness of the order passed by the Returning Officer?
3. To what relief, if any, is the petitioner entitled?

FINDINGS

Issue No. 1.—The petitioner has alleged in his petition that the order passed by the Returning Officer on 28th November 1951 rejecting his nomination papers is wrong in as much as the contract referred to by the Returning Officer in his order, is not a contract which falls within the provisions of Section 7(d) of the Representation of the People Act, 1951 and as such he did not suffer from any disqualification to stand as a candidate for the State Legislature of Rajasthan for which he had filed the nomination papers. The order was passed by the Returning Officer on the objection of the Respondent No. 2 Shri Haqiqat Ullah and runs as under:—

"S. Lumaram has filed three nomination papers for Sanchore Constituency. The objector Haqiqat Ullah Khan has raised the objection that he holds a contract under the Rajasthan Government. The candidate himself agrees that he holds a contract from the Mines Department and as such is disqualified under section 7 of R.P. Act of 1951. His papers are therefore rejected. Announced."

The petitioner has filed five original contracts marked as Exbs. P.2 to P.6, which show that he has been taking the contracts from the Director, Department of Mines and Geology on behalf of the Rajasthan Government, according to which he has been given the sole right to work the building stone quarries at various places in Rajasthan and to sell such stone within and without those limits. The contracts relevant for the purpose for deciding the issue in dispute are Exbs. 2, 3 and 5, which were all subsisting on the date of the nomination of the petitioner. Since all these three contracts are absolutely identical in their terms and conditions except that they relate to different places, it will be convenient to refer them as one contract. It is admitted by the petitioner that he did hold a contract for

working the building stone quarries from the Government of Rajasthan, but his contention is that this contract does not fall within the provisions of Section 7(d) of the Representation of the People Act, 1951, and as such did not entail any disqualification upon him. It is admitted by the learned counsel for respondent No. 4 that the petitioner did not hold any contract other than those mentioned above. Section 7(d) of the Representation of the People Act, 1951 runs as under:—

"Disqualifications for membership of Parliament or of a State Legislature:—
A person shall be disqualified for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State.....(d) if whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

The main terms and conditions of the contract in question in order to bring it within the mischief of section 7(d) of the Representation of the People Act, 1951 which have been relied upon by the learned Counsel for respondent No. 4 are as under.—

2. The contractor hereby covenants with the Government as follows:—

- * * * *
- (e) to submit the excavation and removal of all stone required for the bona-fide use of Jodhpur Railway, the Military works and the Jagirdars of Osian, Kehtasar, Dunaria Nalo free of any charge.
- (f) to allow the P.W.D. contractors to excavate and to remove all stone required for the Government works, but will charge royalty on it at the rate prescribed in schedule "B" above, as there is no separate royalty contract, and if despatched by rail he will charge Rs. 2 per wagon.
- (k) to remove all the quarried stone before the expiry of the term of the contract and in case of any quantity of such stone is left at the quarries after the termination of the contract period to sell it to the incoming contractor at reasonable price mutually agreed upon. In case of the disagreement between the outgoing and the incoming contractors regarding reasonable price, both the contractors will have to agree to the decision of the Director, Department of Mines & Geology with right to appeal to the Minister-in-Charge of the Department of Mines and Geology."
- (m) The contract is liable for cancellation by giving three months' notice by the Government.

There is no other term in the contract which is relevant for the purpose of determining this issue.

Now in order to bring any contract within the provisions of Section 7(d) of the Representation of People Act, 1951, it should be a contract for the supply of goods to or for the execution of any works or performance of any services undertaken by the appropriate Government. The learned counsel for respondent No. 4 was asked under what class of contracts mentioned in this clause the contracts in question comes and he said that it comes under the class of contracts "for the supply of goods to the appropriate Government i.e. the State Government. We are afraid we cannot agree with his contention. There is absolutely nothing in the contract which suggests that the petitioner ever agreed to supply any stone to the Government. We cannot go outside the contract and infer that if at any time the Government wanted any stone for its own use, the contractor would have supplied it and as such the contract would fall within the provisions of section 7(d) of the Act. The contract according to its terms and conditions some of which have been reproduced above, is for the purpose of working the stone quarries for which royalty, as laid down, was payable by the petitioner to the Government in addition to the contract money, but if any stone was required for the Government use, it could be removed from the quarries, which was outside the scope of this contract. The learned Counsel for respondent No. 4 has contended that the underlying idea of the provisions of section 7(d) is that the persons who are interested in any contract which affects their interest against the Government are disqualified as the word "supply" is wide enough to include this contract. We are afraid we cannot accept his contention. The terms of the contract in

question are so clear that we cannot put any such meaning on them *viz;* that it is a contract for the supply of goods to the "appropriate Government" in the absence of any such term in it. In this connection, he has referred us to the case of *Shri Shankar Nana Sahib Karpe Versus Maruti Sitaram Sanwant* and others reported on page 2295 of the *Gazette of India, Extraordinary*, dated 16th October 1952, in which the question whether the agreement which *inter alia* provided that when the production of 1951-52 sales is ready, if the contractor is called upon by the Government to sell his stock of firewood and charcoal, he will have to sell his stock to the Government at a certain maximum "ceiling selling price specified in the slip", was held to fall within the provisions of Section 7(d) on account of this condition. The learned Counsel for respondent No. 4 has relied upon the following passage in the judgment of the case and has contended that the contract under consideration, is exactly the same, as the one referred to in the case of *Shri Shankar Nana Sahab Versus Maruti Sitaram Sanwant*:

"It was argued that the meaning of the term "supply" was entirely different from that of term "sell". It was urged that the dictionary meaning of the term "supply" connotes "to fill up, to keep full or to replenish" etc. and that it further implies that one party is in need of something and the other party agrees to supply that want. Therefore it is contended for the petitioner that by no stretch of imagination the expression "sell" could be brought within the ambit of the word "supply". The Tribunal has carefully considered the meaning of the term "supply". The opinion of the Tribunal is that the term "supply" is very comprehensive and includes a transaction of sale. If the petitioner agreed to give Government his stock of firewood and charcoal when ready at a particular ceiling rate it meant that he contracted to supply Government the said quantity of goods. It is impossible to hold that there was only a contract to resell to Government, the said quantity of goods and that it did not amount to a contract to supply goods to Government.

After a very careful perusal of the terms and conditions of the contract in question, we are of the opinion that this contract does not contain any such term as the one which was the subject matter of discussion in the above reported case, and we hold that it does not fall within the provisions of section 7(d) of the Representation of People Act, 1951, so as to entail a disqualification against the petitioner under this section. Even the conditions mentioned in para. 2(k) and (m) referred to by the learned counsel for respondent No. 4 do not justify a different conclusion. Every contract must be interpreted in the light of the terms contained therein as the parties rights and obligations arise with reference to such terms and no other terms which were not in the contemplation of the parties, should be imported in the contract. Accordingly we come to the conclusion that the petitioner's nomination papers were improperly rejected by the Returning Officer and answer the first part of the issue accordingly.

Issue No. 2.—This issue relates to the estoppel pleaded by the respondent No. 4 against the petitioner, *viz* that since the petitioner had admitted before the Returning Officer that he was holding a contract from the Government of Rajasthan, he is now precluded from going back from it. This argument, in our opinion, has no force at all. Firstly, there can be no estoppel against the Statute, as the question whether the contract in dispute falls within the provisions of section 7(d) of the Representation of the People Act 1951 is one of law, and secondly, the order of rejection does not show that the petitioner had admitted before the Returning Officer that he was holding a contract "for the supply of goods to the appropriate Government". We find from the order of refection that the Returning Officer had an impression in his mind that any and every contract to which the Government is a party will fall within the provisions of section 7(d) of the Representation of the People Act 1951, which is not correct. If the Returning Officer, at the time of scrutiny of the petitioner's nomination papers, had carefully considered the provisions contained in section 7(d) of the Act, we are sure, he would never have come to the conclusion to which he came. We are, therefore, of the opinion that no estoppel can arise against the petitioner from challenging the order passed by the Returning Officer rejecting the petitioner's nomination papers and answer this issue accordingly.

Issue No. 3.—As a result of our findings on issues 1 and 2 a presumption of law arises that the improper rejection of the petitioner's nomination papers has materially affected the result of the election of the respondent No. 4 from the Sanchore Constituency and his election is liable to be declared wholly void.

Then there remains only the question as to what order should be passed about costs. The petitioner's nomination papers were rejected by the Returning Officer on the objection of Respondent No. 2, who again in these proceedings has supported the petitioner. In view of his conduct, we would have passed an order of costs in favour of the petitioner against respondent No. 2, but we are afraid we cannot pass such an order. Therefore, we propose the usual order of costs, which follow the event *viz.*; that the petitioner is allowed the costs of this petition against respondent No. 4 and assess the pleader's fee at Rs. 100. The memo. of costs will be drawn up accordingly. We answer this issue accordingly and the second part of issue 1 in the affirmative.

ORDER

The petitioner's election petition is allowed and it is declared that the election of the returned candidate, Shri Kishore Singh Respondent No. 4 from the Sanchore Constituency of the Rajasthan Legislative Assembly in 1952 is wholly void.

Respondent No. 4 shall pay the costs of the petition to the petitioner including 100 as Pleader's fee and shall bear his own costs. (Sections 98 and 100 of the Representation of the People Act, 1951).

Pronounced, signed and dated in Open Court, 30th April, 1953.

(Sd.) M. P. ASTHANA, Chairman.

(Sd.) M. C. BHANDARI, Member.

(Sd.) GOVERDHANAS T. GAJRIA, Member.

[No. 19/311/52-Elec.III/6525.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

